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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,646	09/24/2003	Robert Lauter	25514-C USA	7882

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EXAMINER

PHILLIPS, CHARLES E

ART UNIT	PAPER NUMBER
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3751

MAIL DATE	DELIVERY MODE
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01/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/671,646

Applicant(s)

LAUTER ET AL.

Examiner

Charles E. Phillips

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2007 and 05 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention. The sales meeting disclosed as occurring on 6/5/2000 is deemed public use or sale.

In the paragraph bridging pages 2-3 of the 11/17/06 paper, it is stated that “Exhibit A is a copy of a brochure illustrating a spa incorporating the claimed features of the present invention”. There is also an exhibit labeled “A” which consists of four declarations. There are two “Exhibit B” documents, one is the confidentiality agreement and the other is the printers invoice. Exhibit C is entitled “STS/LSS Technical Training” and is said to have been printed “on or about November 5, 2000”. With respect to these documents and the 10/13/05 papers, the following issues are presented:

1. The disclosures at the June 5, 2000 meeting constitute use and/or sale under 102; counsel argues that at the bottom of page 3 “As explained in paragraph (4), Mr. Valmassoi explains that the prototype did not have the means necessary for raising and lowering the compartments which house the speakers and television set.”; however, this substance is not the subject of the instant claims and the joint declaration filed 11/20/06 states “The prototype had three compartments movably mounted in a surface surrounding the upper edge of the tub. The compartments were configured

substantially as shown and described in the above-identified patent application.

Speakers and a television set were mounted in the compartments. The compartments were capable of being moved vertically between a raised position wherein the screen of the television set could be viewed and the speakers were functional, and a lowered one wherein they were recessed within the surface surrounding the tub. The television and the speakers were not electronically wired, and the operating system for raising and lowering the compartments was not installed, but the prototype construction was otherwise as described in the application and demonstrated the utility and operability of the invention. The purpose of the prototype was to provide a visual demonstration to a selected group of Master Spas sales representatives and dealers of a product offering. The demonstration was planned to be held at the Master Spas headquarters on June 5, 2000. " Notwithstanding the phrase "was planned" of the previous sentence, it is established that the substance of the instant claims was in fact presented at this meeting. If this meeting was in confidence then copies of the executed confidentiality agreements of all of the thirty attendees must be presented to establish same.

2. The printing of the product brochure "on or about November 5, 2000" as referred to in paragraph one of page 3 of the 11/17/06 arguments constitutes public use absent some showing to the contrary, in that personnel of the printing entity became aware of the invention more than one year prior to filing provisional application 60/332,861 on 11/6/01.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nomura in view of Hodak or Farrell.

Nomura discloses a combination "spa" which comprises a tub (#1) having a bottom and a plurality of sidewalls (see figure 1) having an upper edge (see figure 1). Nomura discloses a surface (# 5) with an aperture (see figure 4). The water-tight housing (#21 of Fig. 4) of Nomura comprises an entertainment system (#6), in the form of a TV, that is positioned in alignment with the aperture (see figures 1 and 4). The entertainment system is movable between a first position beneath the surface and a second position above the surface, see paragraphs (0010), (0011), (0013). Further, the housing of Nomura comprises a mechanism (#25) to move the housing from the first and second positions and a control system (#4) for controlling the mechanism. Nomura further discloses in Fig. 4, a sealing arrangement employing a sealing member 26 (see paragraph (0016)).

Nomura lacks a showing that a cover projects beyond the perimeter of the aperture.

Hodak in Fig. 3 and Farrell in Fig. 4 show a container where a lid 24' and 20 are shown to have a protruding peripheral flange 27' and 34 which would serve as a seal on the upper surface of the container in a manner conventional to many containers in the art such as paint cans and liquid containers. It would have been obvious to the ordinary artisan to provide the former with the flanged arrangement of the latter as both teach waterproof systems. The claim 2 "rib" is seen at 40 of Hodak and Farrell. Claim 3 is met by element 22 of Nomura. Re: claims 4-6, to provide multiples of the system described supra would have constituted an obvious extension of the teachings here.

Applicant's arguments filed 7/11/07 and 10/5/07 have been fully considered but they are not persuasive. Applicant has ignored the call by the examiner for copies of the confidentiality agreements that were allegedly executed by the attendees of the meeting at issue. The practice calls for evidence in support of 131 statements. The presentation of unexecuted copies of the agreement are accorded no probative value. This issue can be resolved by presentation of the copies called for in this and the last office action. Issue is taken with the arguments concerning the "use" portion of the rejection, in that it is alleged by the examiner that personell at the printing agency were aware of the substance of the invention prior to one year prior to filing. The arguments presented do not appear to be germane to this issue and are not convincing as they do not address the issue of disclosure of the invention i.e. use, as alleged. With respect to the art rejection, the proposed combination would merely provide Nomura with a peripheral flange at it's uppermoste surface which is conventional in numerous sealed containers in many arts. It is submitted that Nomura meets all of the amended substance of the 7/9/07 paper and the movement described is achieved by Nomura.

Claims 1-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. No discussion is found of support for the phrase added to the end od paragraph four of claim 1, i.e. "free and unrestricted movement", where is this found in the specification?

Claims 7-8 are deemed free of the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Phillips whose telephone number is 571-272-4893. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson, can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Charles E. Phillips
Primary Examiner